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UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

**MICAYLE TESTER,**

Plaintiff,

vs.

**NO BONES HOSPITALITY OREGON, LLC**, an Oregon limited liability company,  
and **MACKENZIE DEVITO**, an individual,

Defendants.

Case No.

COMPLAINT

DEMAND FOR JURY TRIAL

**COMPLAINT**

Micayle Tester (hereinafter “plaintiff”) complains as follows against No Bones Hospitality Oregon, LLC and MacKenzie DeVito (collectively “NO BONES”).

**PRELIMINARY STATEMENT**

1.

This is an action under federal law to recover unpaid minimum wages and overtime and liquidated damages. Plaintiff requested her time and pay records and personnel file prior to filing this lawsuit, but no such records have been produced. All allegations herein are therefore made to the best of plaintiff’s and her counsel’s good-faith

knowledge, information and belief, based upon the evidence available to them prior to litigation, before the parties have had the chance to conduct full discovery, and plaintiff reserves the right to amend her allegations following completion of discovery.

### **JURISDICTION AND VENUE**

2.

This Court has jurisdiction over the subject matter of this complaint pursuant to 29 U.S.C. § 216 (Fair Labor Standards Act (“FLSA”)), 28 U.S.C. § 1331 (Federal Question), and 28 U.S.C. § 1337 (Actions arising under acts of Congress relating to commerce).

3.

Venue is proper in the District of Oregon pursuant to 28 U.S.C. § 1391(b)(1) and (2) because NO BONES transacts business in this district, plaintiff was employed by NO BONES in this district, and acts and omissions that are the subject of this suit transpired in this district.

### **PARTIES**

4.

At all material times, plaintiff was an employee of NO BONES.

5.

Defendant No Bones Hospitality Oregon, LLC is an Oregon limited liability company that at all material times was registered with the Oregon Secretary of State as doing business in Oregon. Defendant MacKenzie DeVito acted on behalf of and in the interest of No Bones Hospitality Oregon, LLC with regard to all decisions, acts and omissions alleged herein.

**FACTS**

6.

NO BONES did not pay Ms. Tester her agreed rate or the minimum wage or overtime for all of the hours that she worked.

7.

NO BONES did not pay plaintiff the minimum wage or overtime during weeks in which it paid her a salary.

8.

Plaintiff worked far more than 40 hours per week for NO BONES but was not paid for all of that time, let alone at the overtime rate.

9.

In at least one workweek, NO BONES failed to pay plaintiff anything at all on payday.

**FIRST CLAIM FOR RELIEF**

(FLSA Minimum Wage Claim)

10.

All previous paragraphs are incorporated by reference herein.

11.

Pursuant to 29 U.S.C. § 206, NO BONES was required to pay plaintiff at least the amount of the federal minimum wage, when those wages were due, but willfully failed to do so.

12.

Plaintiff is entitled to collect the difference between the wages received when due and the federal minimum wages due in an amount to be proven at trial, in addition to

liquidated damages in the same amount, together with attorney fees, costs and expenses, pursuant to 29 U.S.C. § 216(b).

**SECOND CLAIM FOR RELIEF**

(FLSA Overtime Claim)

13.

All previous paragraphs are incorporated by reference herein.

14.

Pursuant to 29 U.S.C. § 207, NO BONES was required to pay plaintiff at least one and one half times the regular rate of pay for all hours worked in excess of 40 in a given workweek, when those wages were due, but willfully failed to do so.

15.

Plaintiff is entitled to collect the difference between the wages received when due and the overtime wages due, in an amount to be proven at trial, in addition to liquidated damages in the same amount, together with attorney fees, costs and nontaxable expenses, pursuant to 29 U.S.C. § 216(b).

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff requests that the Court award such damages as set forth above and in amounts to be proven at trial; award attorney fees, costs and expenses; and order such further or alternative relief as the Court deems appropriate.

DATED this 25<sup>th</sup> day of July, 2017

JON M. EGAN, P.C.

*s/ Jon M. Egan*

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JON M. EGAN, OSB # 002467  
Attorney for Plaintiff